

REMARKS

Claims 1-4, 6-22, 28-38, and 40-47 are pending. Claims 1-4, 6-7, 12-22, 24-27, 37-38, and 40-47 are rejected under 35 U.S.C. § 102(e). Claims 8-11 and 28-34 are allowed. Claims 5 and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Claims 1 and 4 are currently amended.

Claim 1 is rejected under 35 U.S.C. § 102(e) as being anticipated by Rashid-Farrokhi et al. (U.S. Pat. No. 6,400,780). Claim 5 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all limitations of the base claim and any intervening claims. Claim 5 depends directly from claim 1. Claim 1 is amended to include the limitations of claim 5. Claim 5 is cancelled without prejudice. Thus, claim 1 and depending claims 2-4 and 6-7 are patentable under 35 U.S.C. § 102(e) over Rashid-Farrokhi et al.

In the previous Office Action dated March 28, 2005, Examiner stated claims 5, 23, and 39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. (page 10, paragraph 4). In Applicants' previous amendment filed July 28, 2005, independent claim 18 was rewritten to include the limitations of claim 23. Claim 23 was cancelled without prejudice. Thus, according to Examiner's previous Office Action, independent claim 18 and depending claims 19-22 are patentable under 35 U.S.C. § 102(e) over Rashid-Farrokhi et al. (U.S. Pat. No. 6,400,780). Examiner, however, has maintained the rejection of amended claim 18 and respective depending claims. Was this an oversight?

Examiner has cited delay element 117 of Rashid-Farrokhi et al. as disclosing "a delay element providing a distinct delay associated with each antenna and configured to alter the distinct delay in response to a change of a path profile associated with the transmitter channel" as required by claim 18. This claim element includes the limitation of former claim 23. Referring to

Figure 3 and page 12, lines 14-20, of the instant specification, advantages of choosing variable delays in response to changing path profiles are described in detail. In particular, delays at each antenna may be chosen so that strongest signals do not overlap. (page 12, lines 17-20). Rashid-Farrokhi et al. do not disclose this limitation or the corresponding advantage. Thus, applicants respectfully submit that claims 18-22 are patentable under 35 U.S.C. § 102(e) over Rashid-Farrokhi et al.

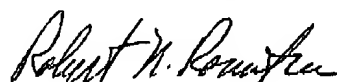
Independent claim 12 is rejected under 35 U.S.C. § 102(e) as being anticipated by Rashid-Farrokhi et al. In their previous response filed July 28, 2005, applicants amended independent claim 12 to include the previously discussed limitations of claim 23. Claim 12 now recites “A communication system comprising: a transmitter having a plurality of spaced apart antennas; a **channel measurement circuit coupled to the plurality of spaced apart antennas and arranged to produce a path profile estimate in response to a signal from a remote transmitter**; a channel input terminal coupled to receive a data communication signal; and a **delay circuit operatively coupled between the channel input terminal and the plurality of spaced apart antennas providing a distinct delay in the data communication signal in response to the path profile estimate.**” (emphasis added). As previously discussed, Rashid-Farrokhi et al. do not disclose the emphasized features of claim 12. Thus, claim 12 and depending claims 13-17 are patentable under 35 U.S.C. § 102(e) over Rashid-Farrokhi et al.

Independent claims 42 and 45 are rejected under 35 U.S.C. § 102(e) as being anticipated by Rashid-Farrokhi et al. Claims 42 and 45 were amended in the previous response filed July 28, 2005, to recite “a transmitter having a plurality of spaced apart antennas suitable for communication with at least one remote receiver . . . and a **delay element providing a distinct delay associated with each antenna in response to a signal from the at least one remote receiver.**” This is substantially the same limitation of claim 23 that Examiner previously indicated was allowable subject matter. It is also substantially the same limitation of claim 5 that Examiner presently indicates is allowable subject matter. As previously discussed, Rashid-Farrokhi et al. do not

disclose the emphasized features of claims 42 and 45. Thus, claim 42-47 are patentable under 35 U.S.C. § 102(e) over Rashid-Farrokhi et al.

In view of the foregoing, applicants respectfully request reconsideration and allowance of claims 1-4, 6-7, 12-22, 37-38, and 40-47. If the Examiner finds any issue that is unresolved, please call applicants' attorney by dialing the telephone number printed below.

Respectfully submitted,



Robert N. Rountree
Attorney for Applicants
Reg. No. 39,347

Robert N. Rountree, LLC
70360 Highway 69
Cotopaxi, CO 81223
Phone/Fax: (719) 783-0990